

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION**

DESA IP, LLC,)	
Plaintiff,)	
)	Civil Action No. 3-04-0160
v.)	
)	Hon. Aleta A. Trauger
EML TECHNOLOGIES, LLC and)	
COSTCO WHOLESALE CORPORATION,)	Magistrate Judge Joe B. Brown
)	
Defendants.)	

PLAINTIFF’S MOTION TO LIFT STAY AND FOR STATUS CONFERENCE

Plaintiff DESA IP, LLC (“DESA”), by counsel, pursuant to Fed. R. Civ. P. 16, respectfully moves the Court to lift the stay on this action, and for a conference to discuss the present status and future scheduling of this action. DESA respectfully suggests that topics for such conference would include, but not be limited to, the following:

- a. The effect of the ruling of the Court of Appeals for the Federal Circuit (Opinion on file in this action as Docket Entry No. 135) on the balance of this case;
- b. Setting a discovery and trial schedule for the balance of this case. On this topic, DESA would request as early a trial date as the Court’s calendar will permit, and for entry of a discovery schedule consistent with that set forth in the draft proposed Amended Case Management Order and Case Setting, attached hereto as Exhibit A; and
- c. Such other topic(s) as the Court wishes to consider.

In support this motion, DESA would respectfully show the Court as follows:

- 1. On March 2, 2007, following the Court’s granting DESA’s Rule 16 motion, a status conference was held to discuss the effect of the Federal Circuit Opinion on the balance of

this case, and to set a discovery and trial schedule. (*See* Docket Entry No. 137.) At that conference, however, Defendants announced for the first time that they intended to petition the United States Supreme Court for writ of certiorari. (*See* Docket Entry No. 139.) Based on Defendants' statement, this Court stayed this case "pending the denial of the petition or the completion of review by the United States Supreme Court." (*Id.*)

2. Defendants filed their petition for writ of certiorari on May 2, 2007. On June 18, 2007, the United States Supreme Court denied the Defendants' petition for writ of certiorari. A true and correct copy of the United States Supreme Court's June 18, 2007 Order List is attached hereto as Exhibit B. The relevant entry is at the bottom of page 2.

3. Cognizant of the Court's preference for counsel work together where possible, beginning on June 18, 2007, and continuing to the present, counsel for DESA has diligently attempted, without success, to meet and confer with counsel for Defendants regarding a schedule and litigation plan to complete the balance of the case. In that time, counsel for DESA has made numerous efforts by e-mail and telephone. Among other attempts to solicit Defendants' input and commentary on these issues, on July 2, 2007, counsel for DESA sent Defendants' counsel the Proposed Scheduling Order attached hereto as Exhibit A for review and commentary. To date, Defendants' counsel have provided no comments to this proposed order, or provided any other input on these issues, other than a statement in a July 6 email that the proposed dates should be moved back "by a reasonable amount of time" to accommodate Defendants' counsel's schedules.

4. DESA respectfully submits that further delay is unnecessary and that a status conference should be scheduled in the near future. DESA further submits that, with Defendant's

Petition for Writ of Certiorari having been denied nearly a month ago, there is no reason to put off the resumption of proceedings in this case.

WHEREFORE, for the foregoing reasons, DESA moves this Court for an order (1) lifting the stay on this case; and (2) scheduling a conference, at the Court's earliest convenience, to discuss the present status and future scheduling of this matter, with counsel who are unable to appear in person being permitted to appear by telephone.

Respectfully submitted,

By: /s James R. Higgins, Jr.
James R. Higgins, Jr. (KY Bar No. 31790)
Robert J. Theuerkauf (KY Bar No. 89068)
MIDDLETON REUTLINGER
2500 Brown & Williamson Tower
Louisville, Kentucky 40202
Phone: (502) 584-1135
Fax: (502) 561-0442
[Admitted *pro hac vice*]

Robb S. Harvey (TN Bar No. 11519)
Richard G. Sanders (TN Bar No. 23875)
WALLER LANSDEN DORTCH & DAVIS, LLP
511 Union Street – Suite 2700
P.O. Box 198966
Nashville TN 37219-8966
Phone: (615) 244-6380
Fax: (615) 244-6804

Attorneys for Plaintiff, DESA IP, LLC

Certificate of Service

The undersigned certifies that this document is filed according to the Electronic Court Filing (“ECF”) rules in effect for the Middle District of Tennessee on this the 13th day of July, 2007, with the understanding that the ECF system will provide electronic service upon all persons registered to receive ECF notice of filings in this case, including Roger L. Cook and Iris Mitrakos, TOWNSEND AND TOWNSEND AND CREW, Two Embarcadero Center – 8th Floor, San Francisco CA 94111; and Steven W. Riley, BOWEN RILEY WARNOCK & JACOBSEN, 1906 West End Avenue, Nashville TN 37203, *Attorneys for Defendants, EML Technologies, LLC and Costco Wholesale Corporation.*

By: /s Robb S. Harvey